

Research and Special Programs Administration, DOT

§ 190.233

\$10,000 must be made by wire transfer. Payments, or in the case of wire transfers, notices of payment, must be sent to the Chief, General Accounting Branch (M-86.2), Accounting Operations Division, Office of the Secretary, room 2228, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

(b) Payment of a civil penalty assessed in a final order issued under § 190.213 or affirmed in a decision on a petition for reconsideration must be made within 20 days after receipt of the final order or decision. Failure to do so will result in the initiation of collection action, including the accrual of interest and penalties, in accordance with 31 U.S.C. 3717 and 49 CFR part 89.

[Amdt. 190-7, 61 FR 27792, June 3, 1996]

CRIMINAL PENALTIES

§ 190.229 Criminal penalties generally.

(a) Any person who willfully and knowingly violates a provision of 49 U.S.C. 60101 *et seq.* or any regulation or order issued thereunder shall upon conviction be subject for each offense to a fine of not more than \$25,000 and imprisonment for not more than five years, or both.

(b) Any person who willfully violates a regulation or order under this subchapter issued under the authority of 49 U.S.C. 5101 *et seq.* as applied to offshore gas gathering lines shall upon conviction be subject for each offense to a fine of not more than \$25,000, imprisonment for a term not to exceed 5 years, or both.

(c) Any person who willfully and knowingly injures or destroys, or attempts to injure or destroy, any interstate transmission facility or any interstate pipeline facility (as those terms are defined in 49 U.S.C. 60101 *et seq.*) shall, upon conviction, be subject for each offense to a fine of not more than \$25,000, imprisonment for a term not to exceed 15 years, or both.

(d) Any person who willfully and knowingly defaces, damages, removes, destroys any pipeline sign, right-of-way marker, or marine buoy required by 49 U.S.C. 60101 *et seq.* or 49 U.S.C. 5101 *et seq.*, or any regulation or order issued thereunder shall, upon conviction, be subject for each offense to a

fine of not more than \$5,000, imprisonment for a term not to exceed 1 year, or both.

(e) No person shall be subject to criminal penalties under paragraph (a) of this section for violation of any regulation and the violation of any order issued under § 190.217, § 190.219 or § 190.229 if both violations are based on the same act.

[45 FR 20413, Mar. 27, 1980, as amended by Amdt. 190-2, 54 FR 32344, Aug. 7, 1989; Amdt. 190-4, 56 FR 63770, Dec. 5, 1991; Amdt. 190-6, 61 FR 18515, Apr. 26, 1996]

§ 190.231 Referral for prosecution.

If an employee of the Research and Special Programs Administration becomes aware of any actual or possible activity subject to criminal penalties under § 190.229, the employee reports it to the Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. The Chief Counsel refers the report to OPS for investigation. Upon completion of the investigation and if appropriate, the Chief Counsel refers the report to the Department of Justice for criminal prosecution of the offender.

[Amdt. 190-6, 61 FR 18515, Apr. 26, 1996]

SPECIFIC RELIEF

§ 190.233 Hazardous facility orders.

(a) Except as provided by paragraph (b) of this section, if the Associate Administrator, OPS finds, after reasonable notice and opportunity for hearing in accord with paragraph (c) of this section, and § 190.211(a), a particular pipeline facility to be hazardous to life or property, the Associate Administrator, OPS shall issue an order pursuant to this section requiring the owner or operator of the facility to take corrective action. Corrective action may include suspended or restricted use of the facility, physical inspection, testing, repair, replacement, or other action, as appropriate.

(b) The Associate Administrator, OPS may waive the requirement for notice and hearing under paragraph (a) of this section before issuing an order pursuant to this section when the Associate Administrator, OPS determines that the failure to do so would result in

the likelihood of serious harm to life or property. However, the Associate Administrator, OPS shall include in the order an opportunity for hearing as soon as practicable after issuance of the order. The provisions of paragraph (c)(2) of this section apply to an owner or operator's decision to exercise such an opportunity for hearing. The purpose of such a post-order hearing is for the Associate Administrator, OPS to determine whether the order should remain in effect or be rescinded or suspended in accord with paragraph (g) of this section.

(c) Notice and hearing:

(1) Written notice that OPS intends to issue an order under this section shall be served in accordance with § 190.5, upon the owner or operator of an alleged hazardous facility. The notice shall allege the existence of a hazardous facility, stating the facts and circumstances supporting the issuance of a "hazardous facility order", and providing the owner or operator an opportunity for a hearing, identifying the time and location of the hearing.

(2) An owner or operator elects to exercise his opportunity for a hearing under this section, by notifying the Associate Administrator, OPS of that election in writing within 10 days of service of the notice provided under paragraph (c)(1) of this section or, under paragraph (b) of this section when applicable. Absence of such written notification waives an owner or operator's opportunity for a hearing and allows the Associate Administrator, OPS to proceed to issue a "hazardous facility order" in accordance with paragraphs (d) through (h) of this section.

(3) A hearing under this section shall be presided over by an attorney from the Office of Chief Counsel, Research and Special Programs Administration, acting as Presiding Official, and conducted without strict adherence to rules of evidence. The Presiding Official presents the allegations contained in the notice issued under this section. The owner or operator of the alleged hazardous facility may submit any relevant information or materials, call witnesses and present arguments on the issue of whether or not a "hazardous facility order" should be issued.

(4) Within 48 hours after conclusion of a hearing under this section, the Presiding Official shall submit a recommendation to the Associate Administrator, OPS as to whether or not a "hazardous facility order" is required. Upon receipt of the recommendation, the Associate Administrator, OPS shall proceed in accordance with paragraphs (d) through (h) of this section. If the Associate Administrator, OPS finds the facility to be hazardous to life or property the Associate Administrator, OPS shall issue an order in accordance with this section. If the Associate Administrator, OPS does not find the facility to be hazardous to life or property, the Associate Administrator, OPS shall dismiss the allegations contained in the notice, and promptly notify the owner or operator in writing by service as prescribed in § 190.5.

(d) The Associate Administrator, OPS may find a pipeline facility to be hazardous under paragraph (a) of this section:

(1) If under the facts and circumstances the Associate Administrator, OPS determines the particular facility is hazardous to life or property; or

(2) If the pipeline facility or a component thereof has been constructed or operated with any equipment, material, or technique which the Associate Administrator, OPS determines is hazardous to life or property, unless the operator involved demonstrates to the satisfaction of the Associate Administrator, OPS that, under the particular facts and circumstances involved, such equipment, material, or technique is not hazardous to life or property.

(e) In making a determination under paragraph (d) of this section, the Associate Administrator, OPS shall consider, if relevant:

(1) The characteristics of the pipe and other equipment used in the pipeline facility involved, including its age, manufacturer, physical properties (including its resistance to corrosion and deterioration), and the method of its manufacture, construction or assembly;

(2) The nature of the materials transported by such facility (including their corrosive and deteriorative qualities), the sequence in which such materials

are transported, and the pressure required for such transportation;

(3) The aspects of the areas in which the pipeline facility is located, in particular the climatic and geologic conditions (including soil characteristics) associated with such areas, and the population density and population and growth patterns of such areas;

(4) Any recommendation of the National Transportation Safety Board issued in connection with any investigation conducted by the Board; and

(5) Such other factors as the Associate Administrator, OPS may consider appropriate.

(f) The order shall contain the following information:

(1) A finding that the pipeline facility is hazardous to life or property.

(2) The relevant facts which form the basis for that finding.

(3) The legal basis for the order.

(4) The nature and description of particular corrective action required of the respondent.

(5) The date by which the required action must be taken, or completed and, where appropriate, the duration of the order.

(6) If a hearing has been waived pursuant to paragraph (b) of this section, a statement that an opportunity for a hearing is provided at a particular location and at a certain time after issuance of the order.

(g) The Associate Administrator, OPS shall rescind or suspend a hazardous facility order whenever the Associate Administrator, OPS determines that the facility is no longer hazardous to life or property. When appropriate, however, such a rescission or suspension may be accompanied by a notice of probable violation issued under § 190.207.

(h) At any time after an order issued under this section has become effective, the Associate Administrator, OPS may request the Attorney General to bring an action for appropriate relief in accordance with § 190.235.

(i) Upon petition by the Attorney General, the District Courts of the United States shall have jurisdiction,

to enforce orders issued under this section by appropriate means.

[45 FR 20413, Mar. 17, 1980, as amended by Amdt. 190-3, 56 FR 31090, July 9, 1991; Amdt. 190-6, 61 FR 18515, Apr. 26, 1996]

§ 190.235 Injunctive action.

Whenever it appears to the Associate Administrator, OPS that a person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any provision of 49 U.S.C. 60101 *et seq.* or any regulations issued thereunder, the Administrator, RSPA, or the person to whom the authority has been delegated, may request the Attorney General to bring an action in the appropriate U.S. District Court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages as provided under 49 U.S.C. 60120 and 49 U.S.C. 5123.

[Amdt. 190-6, 61 FR 18516, Apr. 26, 1996]

190.237 Amendment of plans or procedures.

(a) A Regional Director begins a proceeding to determine whether an operator's plans or procedures required under parts 192, 193, 195, and 199 of this subchapter are inadequate to assure safe operation of a pipeline facility by issuing a notice of amendment. The notice shall provide an opportunity for a hearing under § 190.211 of this part and shall specify the alleged inadequacies and the proposed action for revision of the plans or procedures. The notice shall allow the operator 30 days after receipt of the notice to submit written comments or request a hearing. After considering all material presented in writing or at the hearing, the Associate Administrator, OPS shall determine whether the plans or procedures are inadequate as alleged and order the required amendment if they are inadequate, or withdraw the notice if they are not. In determining the adequacy of an operator's plans or procedures, the Associate Administrator, OPS shall consider:

(1) Relevant available pipeline safety data;

(2) Whether the plans or procedures are appropriate for the particular type